DARUS v. PUBLIC PROSECUTOR

[A.Cr.J. (Hepworth J.) July 1, 1964]

[Alor Star — Criminal Appeal No. 62 of 1964]

Criminal Procedure — Police supervisee — Failure to report himself once a month to police — "Shall.... be liable to imprisonment for one year" — Criminal Procedure Code (Cap. 6), ss. 296 and 297.

The term of imprisonment of one year under section 297 of the Criminal Procedure Code is a maximum sentence and any lesser term may be imposed as is considered appropriate to the circumstances of the particular case.

Cases referred to:—

(1) *Public Prosecutor* v. *Man bin Ismail* [1939] M.L.J. 207.

(2) *Public Prosecutor* v. *Lee Ah Sam* [1949] M.L.J. 236.

(3) *Ng Chwee Puan* v. *Reg.* [1953] M.L.J. 86.

(4) *Khor Seek Pok* v. *Public Prosecutor* [1958] M.L.J. 170

CRIMINAL APPEAL.

G. N. Christie for the appellant.

Wan Ismail bin Wan Mohd. Salleh (Deputy Public Prosecutor) for the respondent.

Hepworth J.: The appellant was charged in the Magistrate's Court, Yen, Kedah, with an offence under section 297 of the Criminal Procedure Code in that he, being a person subject to the supervision of the police, did fail to comply with the requisitions of section 296 of the Criminal Procedure Code in that he failed to report himself once in each month to the officer-in-charge of Sungei Limau Dalam Police Station, Yen. The appellant pleaded guilty to the charge and was sentenced to one year's imprisonment with effect from the date of arrest.

The appellant appealed against the sentence of one year's imprisonment on the ground that not only was this sentence manifestly excessive but that the learned magistrate had misdirected himself in law in holding that this sentence was a minimum and mandatory. The learned magistrate stated in his grounds of judgment that as the sentence of one year's imprisonment under section 297 of the Criminal Procedure Code was mandatory he had no other alternative.

The operative part of section 297 states that a person committing an offence under that section "shall....be liable to imprisonment for one year."

In *Public Prosecutor* v. *Man bin Ismail* (1) Aitken J. held that the words "shall be liable to" give the court an absolute discretion as to whether it shall award a sentence of imprisonment or deal with the case under and in accordance with the probationary provisions of section 294 of the Criminal Procedure Code.

In *Public Prosecutor* v. *Lee Ah Sam* (2) the Court of Appeal held that the words "shall be liable to" show the maximum extent to which a person convicted can be sentenced.

In *Ng Chwee Puan* v. *Reg.*(3) Brown J. held that the word "liable" contains no obligatory or mandatory connotation.

In *Khor Seek Pok* v. *Public Prosecutor* (4) Rigby J. after referring with approval to the case of *Ng Chwee Puan* v. *Reg.*, held that the words "liable on conviction to a fine of $10,000" gave the court a discretion to impose a fine of any sum within the maximum amount of $10,000.

It is clear therefore that the term of imprisonment of one year under section 297 of the Criminal Procedure Code is a maximum and that any lesser term may be imposed as is considered appropriate to the circumstances of the particular case.

From reading the record and the learned magistrate's grounds of judgment I got the impression that had the learned magistrate realised that imprisonment for one year was a maximum and was not mandatory, he would have awarded some lesser punishment. Accordingly I confirmed the conviction and varied the sentence to one of six months' imprisonment.

Conviction confirmed. Sentence varied.

CHIN KEOW v. GOVERNMENT OF THE FEDERATION OF MALAYA & ANOR.

[O.C.J. (Ong J.) July 2, 1964]

[K.L. — Civil Suit No. 342 of 1962]

Negligence — Professional negligence — Medical practitioner prescribing penicillin injection without inquiry whether patient was allergic — Hypersensitivity of patient — Death arising — Standard of care required — Forseeability.

A medical practitioner who prescribes penicillin injection for a patient without inquiring about the latter's reaction to it is not exercising the standard of care required of an ordinary man practising that particular profession and accordingly is guilty of negligence.

Cases referred to:—

(1) *In re Garnett* L.R. 31 Ch. D. 1, 9.

(2) *Plunkett* v. *Bull* (1915) 19 C.L.R. 544, 548-9.

(3) *Roe* v. *Minister of Health* [1954] 2 W.L.R. 915, 926.

(4) *Bolam* v. *Friern Hospital Management Committee* [1957] 1 W.L.R. 582, 586.

(5) *Hunter* v. *Hanley* [1955] S.L.T. 213.

CIVIL SUIT.

P. G. Lim (Miss) for the plaintiff.

Au Ah Wah (Federal Counsel) for the defendants.

Ong J.: This is a claim by the dependants of a deceased person for damages under section 7 of the Civil Law Ordinance. The deceased had died of anaphylactic shock as the result of an injection of procaine penicillin and the plaintiff